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**BY U.S. CERTIFIED MAIL**

October 7, 2015

Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415

Attorney General  
U.S. Department of Justice  
Citizen Suit Coordinator  
Room 2615  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Re: *California Sportfishing Protection Alliance v. Republic Services, Inc., et al*;  
Case No. 3:14-cv-03878-LB – Settlement Agreement; 45-day review

Dear Citizen Suit Coordinators,

On October 6, 2015, the parties in the above-captioned case entered into a settlement agreement setting forth mutually agreeable settlement terms to resolve the matter in its entirety. Pursuant to the terms of the settlement agreement and 40 C.F.R. § 135.5, the enclosed settlement agreement is being submitted to the United States Environmental Protection Agency and the U.S. Department of Justice for a 45-day review period. If you have any questions regarding the settlement agreement, please feel free to contact me or counsel for Defendants listed below. Thank you for your attention to this matter.

Sincerely,

Douglas J. Chermak  
Attorney for Plaintiff California Sportfishing Protection Alliance

cc via First Class Mail: Jared Blumenfeld, Regional Administrator, EPA Region 9

cc via e-mail: Thomas Bruen, Counsel for Defendants, [tbruen@tbsglaw.com](mailto:tbruen@tbsglaw.com)

Encl.

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS**

This Settlement Agreement and Mutual Release of Claims ("AGREEMENT") is entered into between the California Sportfishing Protection Alliance ("CSPA") and Allied Waste Systems, Inc. ("Allied") (all parties collectively are referred to as the "SETTLING PARTIES") with respect to the following facts and objectives:

### **RECITALS**

**WHEREAS**, CSPA is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement, and restoration of Suisun Bay, the Sacramento-San Joaquin Delta, and other California waters. Bill Jennings is the Chairperson of CSPA and a member of CSPA;

**WHEREAS**, Allied owns and operates a maintenance and parking yard for a fleet of refuse collection vehicles located at 441 North Buchanan Circle in Pacheco, California (the "Facility"). Through June 30, 2015, the Facility has operated pursuant to State Water Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities. Beginning on July 1, 2015, the Facility will operate pursuant to State Water Resources Control Board Water Quality Order No. 2014-0057-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001 (hereinafter "General Permit"). A map of the Facility is attached hereto as Exhibit A and incorporated by reference;

**WHEREAS**, on or about June 18, 2014, CSPA provided Allied with a Notice of Violation and Intent to File Suit ("60-Day Notice Letter") under Section 505 of the Federal Water Pollution Control Act (the "Act" or "Clean Water Act"), 33 U.S.C. § 1365;

**WHEREAS**, on August 25, 2014, CSPA filed its Complaint in the United States District Court for the Northern District of California (*California Sportfishing Protection Alliance v. Republic Services, Inc., et al.*, Case No. 3:14-cv-03878-LB). A true and correct copy of the Complaint, including the 60-Day Notice Letter, is attached hereto as Exhibit B and incorporated by reference;

**WHEREAS**, Allied denies any and all of CSPA's claims in its 60-Day Notice Letter and Complaint;

**WHEREAS**, CSPA and Allied, through their authorized representatives and without either adjudication of CSPA's claims or admission by Allied of any alleged violation or other wrongdoing, have chosen to resolve in full CSPA's allegations in the 60-Day Notice Letter and Complaint through settlement and avoid the cost and uncertainties of further litigation; and

**WHEREAS**, CSPA and Allied have agreed that it is in their mutual interest to enter into this AGREEMENT setting forth the terms and conditions appropriate to resolving CSPA's allegations set forth in the 60-Day Notice Letter and Complaint.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CSPA and Allied hereby agree as follows:

#### **EFFECTIVE DATE**

1. The term "Effective Date," as used in this AGREEMENT, shall mean the last date on which the signature of a party to this AGREEMENT is executed.

#### **COMMITMENTS OF CSPA**

**2. Stipulation to Dismiss and [Proposed] Order.** Within ten (10) calendar days of the Agency Approval Date, as defined in Paragraph 20 below, CSPA shall file a Stipulation to Dismiss and [Proposed] Order thereon pursuant to Federal Rule of Civil Procedure 41(a)(2) with the United States District Court for the Central District of California ("District Court"), with this AGREEMENT attached and incorporated by reference, specifying that CSPA is dismissing all claims in CSPA's Complaint. Consistent with Paragraphs 26 and 27 herein, the Stipulation to Dismiss and [Proposed] Order shall state that the District Court will maintain jurisdiction through the Termination Date, as defined in Paragraph 25 below, or through the conclusion of any proceeding to enforce this AGREEMENT, for purposes of resolving any disputes between the SETTLING PARTIES with respect to any provision of this AGREEMENT.

### **COMMITMENTS OF ALLIED**

**3. Compliance with General Permit.** Allied agrees to operate the Facility in compliance with the applicable requirements of the General Permit and the Clean Water Act.

**4. Implemented Storm Water Controls.** Allied shall maintain in good working order all storm water collection and treatment systems at the Facility currently installed or to be installed pursuant to this AGREEMENT, including but not limited to, existing housekeeping measures; provided, however, that the existing sand filtration system will be removed concurrent with installation of the additional BMPS described in paragraph 5 a. below.

**5. Additional Best Management Practices.** Allied shall implement the following structural best management practices ("BMPs") to improve the storm water pollution prevention measures at the Facility on or before November 1, 2015, except as noted:

a. The installation of new storm water discharge bypasses at Areas 1 and 2 at the Facility, as marked on Exhibit A by November 1, 2015; and (2) when developed and placed in service, the Area as marked on Exhibit A as Area 3. This system will route up to 40,000 gallons of storm water runoff from these areas into two 20,000-gallon or four 10,000 gallon mobile storage tanks. Following installation of the tanks, bypasses and associated pumps and piping, the initial storm water discharges from the Facility during the 2015-2016 reporting year will be collected in the storage tanks up to the remaining capacity in the tanks. At any point in which the tanks reach 75% capacity between storm events, the tanks will be sampled immediately, using a ladle dipped into the middle of the tank to fill a gallon container from which the representative sample will then be drawn. The sample will be analyzed in accordance with the General Permit. If any of the sampling results contain levels for any parameters that exceed any of the Numeric Action Level ("NAL") values as set forth in the General Permit, then Allied shall haul all water contained in the tanks off-site to a Publicly Owned Treatment Works (POTW). All documents confirming the disposal of water at any POTW shall be maintained for the term of this AGREEMENT. If the sampling results are all below the NAL values, then Allied may discharge that storm water in accordance with the General Permit. Such

discharge would constitute one of the required storm water samples pursuant to the General Permit.

b. Any storm water discharge in excess of the 40,000 gallons that could not be contained by the mobile storage tanks during a Qualifying Storm Event would constitute a storm water discharge subject to being sampled by Allied pursuant to the General Permit.

c. All storage tanks will be emptied and cleaned out as necessary during the reporting year.

d. If for two consecutive years, the average annual sampling results from all storm water discharges from the Facility outfall are lower than the average NALs contained in the General Permit for each parameter that the Facility samples, and providing that the storm water sampling results do not indicate two exceedances of the instantaneous NALs contained in the General Permit for total suspended solids or pH, then Allied may remove 20,000 gallons of the mobile storage tank capacity.

e. Allied shall enhance the BMPs surrounding each drain inlet at the Facility. This shall include the placement of hay bales (except in vehicle driving areas), fiber rolls, oil absorbent pillows, drain inlet filters, and geotextile filters. Allied shall inspect all of these installed measures at each drain inlet on a monthly basis and replace any components as needed. A schematic of this drain inlet protection detail is attached hereto as Exhibit C.

f. Allied shall remove the sand filter system installed in Area 1, which is no longer functional.

g. Allied shall remove and cease storing any storage bins located in the southwest corner of the Facility that have the potential to mix with storm water discharges that exit the Facility onto South Buchanan Circle; provided, however, that Allied may in this area store front end loader bins with lids that have been steam cleaned and washed.

h. Allied shall ensure that all flows from truck washing are discharged through the sanitary sewer

i. If Allied does not obtain four storm water discharge samples during a reporting year, Allied shall consider installing a discrete, automated sampler at the Facility's outfall.

**6. Confirmation of New BMPs.** By November 15, 2015, Allied shall confirm the installation of the measures described above in Paragraph 5 for Areas 1 and 2, and upon completion for Area 3, by submitting digital photos to CSPA.

**7. Additional Housekeeping.** By October 1, 2015, Allied shall implement a sweeping program using a regenerative sweeper to sweep the entire Facility. The Facility shall be swept in anticipation of any predicted storm events (30% chance or greater), and weekly during the period of October 1 through May 31 of the following year, with the exception that sweeping cannot be performed during rain events.

**8. Monitoring.** Allied shall analyze each storm water sample taken in accordance with the General Permit and this AGREEMENT for, at a minimum, pH, total suspended solids, oil and grease, aluminum, and iron.

**9. Monitoring Results.** Results from the Facility's sampling and analysis during the term of this AGREEMENT shall be provided to CSPA not later than July 30th during each year of this AGREEMENT.

**10. Meet and Confer Regarding Exceedance of NALs.** During the 2015-2016 (after completion of the structural BMPS described in section 5), 2016-2017, or 2017-2018 reporting years, if the Facility's storm water sample results indicate that the average of the analytical results for a particular parameter indicates that storm water discharges from the Facility exceed the annual NALs (as set forth in the General Permit) or if two or more analytical results from samples taken for any parameter within the 2015-2016 or 2016-2017 reporting year exceed an applicable instantaneous maximum NAL, Allied agrees to take responsive actions to improve its storm water management practices, including re-evaluating its structural and non-structural

BMPs and considering implementing additional BMPs aimed at reducing levels observed in storm water discharge samples.

In furtherance of that objective, Allied shall prepare a written statement ("Memorandum") discussing:

- (1) Any exceedance or exceedances of NALs;
- (2) An explanation of the possible cause(s) and/or source(s) of any exceedance;  
and
- (3) Responsive actions to improve its storm water management practices,  
including modified or additional feasible BMPs to be considered to further  
reduce the possibility of future exceedance(s).

Such Memorandum shall be e-mailed and sent via first class mail to CSPA not later than July 30th during each year of this AGREEMENT.

11. Any additional measures set forth in the Memorandum shall be implemented as soon as practicable, but not later than the start of the subsequent wet season, except where the SETTLING PARTIES agree in writing to defer implementation of specific measures in order to effectively meet and confer in accordance with Paragraph 12. Within thirty (30) days of implementation, the Facility's SWPPP shall be amended to include any additional BMP measures designated in the Memorandum.

12. Upon receipt of the Memorandum, CSPA may review and comment on any identified or omitted additional measures. If requested by CSPA within thirty (30) days of receipt of such Memorandum, CSPA and Allied shall meet and confer to discuss the contents of the Memorandum and the adequacy of proposed measures to improve the quality of the Facility's storm water to levels at or below the NALs. If requested by CSPA within thirty (30) days of receipt of such Memorandum, CSPA and Allied shall meet and confer and conduct a site inspection within sixty (60) days after the due date of the Memorandum to discuss the contents of the Memorandum and the adequacy of proposed measures to improve the quality of the Facility's storm water to levels at or below the NALs. If within twenty-one (21) days of the parties meeting and conferring, the parties do not agree on the adequacy of the additional measures set forth in the Memorandum, the SETTLING PARTIES may agree to seek a

settlement conference with the Magistrate Judge assigned to this action pursuant to Paragraphs 26 and 27 below. If the SETTLING PARTIES fail to reach agreement on additional measures, CSPA may bring a motion before the District Court consistent with Paragraphs 26 and 27 below. If CSPA does not request a meet and confer regarding the Memorandum within the thirty (30) day period provided for in this paragraph, CSPA shall waive any right to object to such Memorandum pursuant to this AGREEMENT. The Parties may agree in writing to extend any dates contained in this paragraph in order to further this paragraph's meet and confer procedure.

**13.** Any concurrence or failure to object by CSPA with regard to the reasonableness of any additional measures required by this AGREEMENT or implemented by Allied shall not be deemed to be an admission of the adequacy of such measures should they fail to bring the Facility's storm water discharges into compliance with applicable water quality criteria or the BAT/BCT requirements set forth in the General Permit.

**14.** In addition to any site inspections conducted as part of meeting and conferring on additional measures set forth above, Allied shall permit representatives of CSPA to perform one (1) additional site visit to the Facility per year during normal daylight business hours during the term of this AGREEMENT, provided that CSPA provides Allied via e-mail with at least one week prior notice and coordinates the site visit for a date and time that will cause minimal disruption to the Facility's operations.

**15. Provision of Documents and Reports.** During the life of this AGREEMENT, Allied shall provide CSPA with a copy of all documents submitted to the Regional Board, the State Water Resources Control Board ("State Board") or any POTW concerning the Facility's storm water discharges, including but not limited to all documents and reports submitted to the Regional Board and/or State Board as required by the General Permit or documents confirming the disposal of any storm water pursuant to Paragraph 5 of this AGREEMENT. Such documents and reports shall be mailed to CSPA contemporaneously with submission to such agency. Within fourteen business (14) days of a written request (via e-mail or regular mail) by CSPA, Allied also shall provide CSPA a copy of all documents referenced in this AGREEMENT from the year prior to the request, including but not limited to logs, photographs, or analyses.



**16. Amendment of Storm Water Pollution Prevention Plan ("SWPPP").** Within sixty (60) days after the District Court's entry of the Order, Allied shall amend the Facility's SWPPP to incorporate all changes, improvements, sample log forms, and best management practices set forth in or resulting from this AGREEMENT. Allied shall ensure that all maps, tables, and text comply with the requirements of the General Permit. Allied shall ensure that the SWPPP describes all structural and non-structural BMPs and details the measures to be installed. A copy of the amended SWPPP shall be provided to CSPA within thirty (30) days of completion.

**17. Mitigation Payment.** In recognition of the good faith efforts by Allied to comply with all aspects of the General Permit and the Clean Water Act, and in lieu of payment by Allied of any penalties, which have been disputed but may have been assessed in this action if it had been adjudicated adverse to Allied, the SETTLING PARTIES agree that Allied will pay the sum of forty thousand dollars (\$40,000) to the Rose Foundation for Communities and the Environment ("Rose Foundation") for the sole purpose of providing grants to environmentally beneficial projects relating to water quality improvements in the San Francisco-Bay Delta watershed. Payment shall be provided to the Rose Foundation as follows: Rose Foundation, 1970 Broadway, Suite 600, Oakland, CA 94607, Attn: Tim Little. Payment shall be made by Allied to the Rose Foundation within forty-five (45) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. Allied shall copy CSPA with any correspondence and a copy of the check sent to the Rose Foundation. The Rose Foundation shall provide notice to the SETTLING PARTIES within thirty (30) days of when the funds are dispersed by the Rose Foundation, setting forth the recipient and purpose of the funds.

**18. Fees, Costs, and Expenses.** As reimbursement for CSPA's investigative, expert and attorneys' fees and costs, Allied shall pay CSPA the sum of forty four thousand dollars (\$44,000). Payment shall be made by Allied within forty-five (45) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. Payment by Allied to CSPA shall be made in the form of a single check payable to "Lozeau Drury LLP," and shall constitute full payment for all costs of litigation, including investigative, expert and attorneys' fees and costs incurred by CSPA that have or could have been claimed in connection with CSPA's claims, up to and including the District Court's entry of the Order.

**19. Compliance Oversight Costs.** As reimbursement for CSPA's future fees and costs that will be incurred in order for CSPA to monitor Allied's compliance with this AGREEMENT and to effectively meet and confer and evaluate storm water monitoring results for the Facility, Allied agrees to pay CSPA the amount of five thousand dollars (\$5,000) for its costs to be incurred in overseeing the implementation of this AGREEMENT. Allied shall make payment to CSPA within forty-five (45) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. Payment by Allied to CSPA shall be made in the form of a single check payable to "Lozeau Drury LLP."

**20. Review by Federal Agencies.** CSPA shall submit this AGREEMENT to the U.S. EPA and the U.S. Department of Justice (hereinafter, the "Agencies") via certified mail, return receipt requested, within five (5) days after the Effective Date of this AGREEMENT for review consistent with 40 C.F.R. § 135.5. The Agencies' review period expires forty-five (45) days after receipt of the AGREEMENT by both Agencies, as evidenced by the return receipts and the confirming correspondence of DOJ. In the event that the Agencies comment negatively on the provisions of this AGREEMENT, CSPA and Allied agree to meet and confer to attempt to resolve the issue(s) raised by the Agencies. If CSPA and Allied are unable to resolve any issue(s) raised by the Agencies in their comments, CSPA and Allied agree to expeditiously seek a settlement conference with the Magistrate Judge assigned to this matter to resolve the issue(s). If the SETTLING PARTIES cannot resolve the issue(s) through a settlement conference, this AGREEMENT shall be null and void. The date of (a) the Agencies' unconditioned approval of this AGREEMENT, (b) the expiration of the Agencies' review period, or (c) the SETTLING PARTIES' resolution of all issues raised by the Agencies, whichever is earliest, shall be defined as the "Agency Approval Date."

#### **NO ADMISSION OR FINDING**

**21.** Neither this AGREEMENT nor any payment pursuant to the AGREEMENT nor compliance with this AGREEMENT shall constitute evidence or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation. However, this AGREEMENT and/or any

payment pursuant to the AGREEMENT may constitute evidence in actions seeking compliance with this AGREEMENT.

**MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

22. In consideration of the above, and except as otherwise provided by this AGREEMENT, the SETTLING PARTIES hereby forever and fully release each other and their respective direct and indirect parents, affiliates, subsidiaries, divisions, insurers, successors, assigns, and current and former employees, attorneys, officers, directors, members, shareholders, and agents from any and all claims and demands of any kind, nature, or description whatsoever, known and unknown, and from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, which it may presently have, or which may later accrue or be acquired by it, arising from the Complaint or Notice Letters, including, without limitation, all claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed in the Complaint or Notice Letters, for the alleged failure of Defendant to comply with the Clean Water Act at the Facility, up to and including the Termination Date of this AGREEMENT, as defined in Paragraph 25. Defendant Republic Services, Inc. shall be deemed to be one of the SETTLING PARTIES for purposes of the Mutual Release of Liability and Covenant Not to Sue provisions in paragraphs 22 – 24, inclusive, of this Agreement.

23. The SETTLING PARTIES acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The SETTLING PARTIES hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other

arising from, or related to, the allegations and claims as set forth in the 60-Day Notice Letter and Complaint at the Facility up to and including the Termination Date of this AGREEMENT.

24. For the period beginning on the Effective Date and ending on the Termination Date, neither CSPA, its officers, and executive staff will not file or support other lawsuits, by providing financial assistance, personnel time or other affirmative actions, against or relating to the Facility that may be proposed by other groups or individuals who would rely upon the citizen suit provision of the Clean Water Act to challenge the Facility's compliance with the Clean Water Act, or the General Permit.

#### **TERMINATION DATE OF AGREEMENT**

25. Unless an extension is agreed to in writing by the SETTLING PARTIES, this AGREEMENT shall terminate on December 15, 2018 (the "Termination Date"), or through the conclusion of any proceeding to enforce this AGREEMENT, or until the completion of any payment or affirmative duty required by this AGREEMENT.

#### **DISPUTE RESOLUTION PROCEDURES**

26. Except as specifically noted herein, any disputes with respect to any of the provisions of this AGREEMENT shall be resolved through the following procedure. The SETTLING PARTIES agree to first meet and confer in good faith to resolve any dispute arising under this AGREEMENT. In the event that such disputes cannot be resolved through this meet and confer process, the SETTLING PARTIES agree to request a settlement meeting before the Magistrate Judge assigned to this action. In the event that the SETTLING PARTIES cannot resolve the dispute by the conclusion of the settlement meeting with the Magistrate Judge, the SETTLING PARTIES agree to submit the dispute via motion to the District Court.

27. In resolving any dispute arising from this AGREEMENT, the Court shall have discretion to award attorneys' fees and costs to either party. The relevant provisions of the then-applicable Clean Water Act and Rule 11 of the Federal Rules of Civil Procedure shall govern the allocation of fees and costs in connection with the resolution of any disputes before the District Court. The District Court shall award relief limited to compliance orders and awards of

attorneys' fees and costs, subject to proof. The SETTLING PARTIES agree to file any waivers necessary for the Magistrate Judge to preside over any settlement conference and motion practice.

### **GENERAL PROVISIONS**

**28. Impossibility of Performance.** Where implementation of the actions set forth in this AGREEMENT, within the deadlines set forth in those paragraphs, becomes impossible, despite the timely good faith efforts of the SETTLING PARTIES, the party who is unable to comply shall notify the other in writing within seven (7) days of the date that the failure becomes apparent, and shall describe the reason for the non-performance. The SETTLING PARTIES agree to meet and confer in good faith concerning the non-performance and, where the SETTLING PARTIES concur that the non-performance was or is impossible, despite the timely good faith efforts of one of the SETTLING PARTIES, new performance deadlines shall be established. In the event that the SETTLING PARTIES cannot timely agree upon the terms of such a stipulation, either of the SETTLING PARTIES shall have the right to invoke the dispute resolution procedure described herein.

**29. Construction.** The language in all parts of this AGREEMENT shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the General Permit, and the Clean Water Act or specifically herein.

**30. Choice of Law.** This AGREEMENT shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

**31. Severability.** In the event that any provision, section, or sentence of this AGREEMENT is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

**32. Correspondence.** All notices required herein or any other correspondence pertaining to this AGREEMENT shall be sent by regular, certified, overnight mail, or e-mail as follows:

If to CSPA:	<u>Bill Jennings,</u> <u>Executive Director</u> <u>California Sportfishing Protection</u> <u>Alliance</u> <u>Stockton, CA 95204</u> <u>(209) 464-5067</u> <u>deltakeep@me.com</u>	Copy to:	<u>Michael R. Lozeau</u> <u>Douglas J. Chermak</u>  <u>Lozeau Drury LLP</u> <u>410 12th Street, Suite 250</u> <u>Oakland, CA 94607</u> <u>(510) 836-4200</u> <u>michael@lozeaudrury.com</u> <u>doug@lozeaudrury.com</u>
If to ALLIED:	<u>Tim Argenti</u>  <u>General Manager</u> <u>Allied Waste Systems, Inc. dba</u> <u>Republic Services of Contra Costa</u> <u>County</u> <u>441 North Buchanan Circle</u> <u>Pacheco, CA 94553</u> <u>targenti@republicservices.com</u>	Copy to:	<u>Thomas M. Bruen</u> <u>Law Offices of Thomas M.</u> <u>Bruen</u>  <u>1990 North California Blvd.</u> <u>Suite 620</u> <u>Walnut Creek, CA 94596</u> <u>(925) 295-3137</u> <u>tbruen@tbsglaw.com</u>

Notifications of communications shall be deemed submitted on the date that they are e-mailed, postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices.

**33. Counterparts.** This AGREEMENT may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopied, scanned (.pdf), and/or facsimiled copies of original signature shall be deemed to be originally executed counterparts of this AGREEMENT.

**34. Assignment.** Subject only to the express restrictions contained in this AGREEMENT, all of the rights, duties and obligations contained in this AGREEMENT shall inure to the benefit of and be binding upon the SETTLING PARTIES, and their successors and assigns.

**35. Modification of the Agreement.** This AGREEMENT, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the SETTLING PARTIES.

**36. Full Settlement.** This AGREEMENT constitutes a full and final settlement of this matter. It is expressly understood and agreed that the AGREEMENT has been freely and voluntarily entered into by the SETTLING PARTIES with and upon advice of counsel.

**37. Integration Clause.** This is an integrated AGREEMENT. This AGREEMENT is intended to be a full and complete statement of the terms of the agreement between the SETTLING PARTIES and expressly supersedes any and all prior oral or written agreements covenants, representations and warranties (express or implied) concerning the subject matter of this AGREEMENT.

**38. Authority.** The undersigned representatives for CSPA and Allied each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this AGREEMENT.

The SETTLING PARTIES hereby enter into this AGREEMENT.

**ALLIED WASTE SYSTEMS, INC.**

**CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE**

By: Michael Caprio  
Name: Michael A. Caprio  
Title: Area President  
Date: 9/29/15

By: Bill Jennings  
Name: Bill Jennings  
Title: Executive Director  
Date: 10/6/15

**APPROVED AS TO FORM:**

**For Defendant**

**For: Plaintiff**

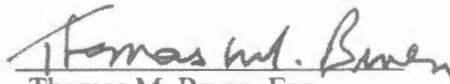
**LAW OFFICES OF THOMAS M.  
BRUEN**

**LOZEAU DRURY LLP**

By:

Name:

Date:



Thomas M. Bruen, Esq.

9-29-15

By:

Name:

Date:



Michael R. Lozeau, Esq.


10/6/15



## CERTIFICATE

The undersigned certifies that she is a duly elected, qualified and acting Secretary of **ALLIED WASTE SYSTEMS, INC.**, a Delaware corporation (the "Corporation"), and that attached hereto as Schedule A is a true and correct copy of resolutions duly adopted by the Board of Directors of the Corporation, and that such resolutions have not been amended or rescinded and are in full force and effect on the date hereof.

Dated: September 28, 2015.

  
\_\_\_\_\_  
Eileen B. Schuler  
Secretary

## SCHEDULE A

**WHEREAS**, the Corporation desires to enter into that certain Settlement Agreement and Mutual Release of Claims (the "**Agreement**") with the California Sportfishing Protection Alliance ("**CSPA**"), to resolve in full CSPA's allegations in (i) the Notice of Violation and Intent to File Suit, under Section 505 of the Federal Water Pollution Control Act, 33 U.S.C. § 1365, and (ii) the Complaint filed by CSPA on August 25, 2014 in the United States District Court for the Northern District of California (*California Sportfishing Protection Alliance v. Republic Services, Inc., et al.*, Case No. 3:14-cv-03878-LB), pursuant to the terms and conditions of the Agreement;

**NOW, THEREFORE, BE IT RESOLVED**, that the Corporation is authorized and directed to execute the Agreement, substantially in the form presented to the Corporation, with such changes as may be approved by the officers or such other persons authorized to execute same;

**FURTHER RESOLVED**, that the Corporation be and hereby is authorized and directed to perform in full its obligations and agreements as set forth in the Agreement;

**FURTHER RESOLVED**, that **MICHAEL A. CAPRIO**, as an Authorized Agent for the Corporation, or any officer of the Corporation, hereby is authorized and directed to execute and deliver the Agreement and any and all other documents on behalf of the Corporation required in connection with the Agreement and in connection with the performance of the Corporation's obligations and agreements set forth therein, all of which actions to be taken or previously taken are hereby ratified and confirmed in all respects; and

**FURTHER RESOLVED**, that the Secretary, or any other officer of the Corporation, is hereby authorized to certify to the adoption of the foregoing resolutions as may be required.

# EXHIBIT A



# **LEGEND**

- DIRECTION OF FLOW
- DRAINAGE INLETS
- STORM WATER DRAIN PIPE
- - - SITE BOUNDARY
- CITY STORM DRAIN
- ① DRAINAGE AREA
- ② NEW AREA 2014-2015 STORM SEASON
- ③ NEW AREA 2015-2016 STORM SEASON

## **FIRST FLUSH DRAINAGE VOLUMES**

FIRST FLUSH	1/10"
AREA 1 (SF)	224,662
VOLUME (GALLONS)	14,002
AREA 2 (SF)	76,337
VOLUME (GALLONS)	4,759
AREA 3 (SQ)	45,984
VOLUME (GALLONS)	2,867
TOTAL GALLONS	21,628

**FIGURE 1**

REPUBLIC SERVICES

PLEASANT HILL DISPOSAL FACILITY  
441 N. BUCHANAN CIRCLE, PACHECO, CA

**SITE MAP**

PREPARED BY:

**SWT Engineering** Civil & Environmental

800 C SOUTH ROCHESTER AVENUE  
ONTARIO, CALIFORNIA 91761

21-PROJ-05-ALL-0-WASTE-PACHECO-PLAN-SUPPLY-FIGURES-PACHECO-FIGURE 1-SITE MAP

# EXHIBIT B

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE, a non-profit  
corporation,

Plaintiff,

vs.

REPUBLIC SERVICES, INC., a  
corporation; ALLIED WASTE SYSTEMS,  
INC., a corporation,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND CIVIL  
PENALTIES**

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA"), a California non-profit corporation, by and through its counsel, hereby alleges:

**I. JURISDICTION AND VENUE**

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the "Clean Water Act" or "the Act"). This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief); and

33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

2. On June 18, 2014, Plaintiff provided notice of Defendants' violations of the Act, and of its intention to file suit against Defendants, to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board ("State Board"); the Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA's notice letter is attached as Exhibit A, and is incorporated by reference.

3. More than sixty days have passed since notice was served on Defendants and the state and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that neither the EPA nor the State of California has commenced or is diligently prosecuting a court action to redress the violations alleged in this complaint. This action's claim for civil penalties is not barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

4. Venue is proper in the Northern District of California pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district. Pursuant to Local Rule 3-2(d), intradistrict venue is proper in Oakland, California, because the source of the violations is located within Contra Costa County.

## II. INTRODUCTION

5. This complaint seeks relief for Defendants' discharges of polluted storm water and non-storm water pollutants from Defendants' facility located at 441 North Buchanan Circle, in Pacheco, California ("the Facility") in violation of the Act and National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-DWQ (hereinafter the "Permit" or "General Permit"). Defendants' violations of the discharge, treatment technology, monitoring requirements, and other procedural and substantive requirements of the Permit and the Act are ongoing and continuous.

6. The failure on the part of persons and facilities such as Defendants and its industrial facility to comply with storm water requirements is recognized as a significant cause of the

1 continuing decline in water quality of Suisun Bay and other area receiving waters. The general  
2 consensus among regulatory agencies and water quality specialists is that storm pollution amounts to  
3 more than half of the total pollution entering the aquatic environment each year.

4 **III. PARTIES**

5 7. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA") is  
6 a non-profit public benefit corporation organized under the laws of the State of California with its  
7 main office in Stockton, California. CSPA has approximately 2,000 members who live, recreate and  
8 work in and around waters of the State of California, including Suisun Bay. CSPA is dedicated to  
9 the preservation, protection, and defense of the environment, the wildlife and the natural resources  
10 of all waters of California. To further these goals, CSPA actively seeks federal and state agency  
11 implementation of the Act and other laws and, where necessary, directly initiates enforcement  
12 actions on behalf of itself and its members.

13 8. Members of CSPA reside in and around Suisun Bay and enjoy using the Bay for  
14 recreation and other activities. Members of CSPA use and enjoy the waters into which Defendant  
15 has caused, is causing, and will continue to cause, pollutants to be discharged. Members of CSPA  
16 use those areas to fish, sail, boat, kayak, swim, bird watch, view wildlife and engage in scientific  
17 study including monitoring activities, among other things. Defendants' discharges of pollutants  
18 threaten or impair each of those uses or contribute to such threats and impairments. Thus, the  
19 interests of CSPA's members have been, are being, and will continue to be adversely affected by  
20 Defendants' failure to comply with the Clean Water Act and the Permit. The relief sought herein  
21 will redress the harms to Plaintiff caused by Defendants' activities.

22 9. Continuing commission of the acts and omissions alleged above will irreparably harm  
23 Plaintiff and its members, for which harm they have no plain, speedy or adequate remedy at law.

24 10. Defendant Allied Waste Systems, Inc. ("Allied Waste") is a corporation organized  
25 under the laws of Delaware. Plaintiff is informed and believes and thereupon alleges that Allied  
26 Waste owns and operates the Facility that is the subject of this complaint.

27 11. Defendant Republic Services, Inc. ("Republic Services") is a corporation organized  
28 under the laws of Delaware. Plaintiff is informed and believes and thereupon alleges that Republic



Services owns or operates the Facility that is the subject of this complaint. Republic Services is indicated as the Facility's operator on the Facility Annual Reports it submits to the Regional Board as well as the Facility's Notice of Intent to Comply with the Terms of the General Permit. In addition, the Facility's operators e-mail address ends in "@republicservices.com."

**IV. STATUTORY BACKGROUND**

12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States, unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

13. Section 402(p) of the Act establishes a framework for regulating municipal and industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by Section 402(p) to regulate industrial storm water discharges through individual permits issued to dischargers or through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).

14. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the U.S. EPA has authorized California's State Board to issue NPDES permits including general NPDES permits in California.

15. The State Board elected to issue a statewide general permit for industrial storm water discharges. The State Board issued the General Permit on or about November 19, 1991, modified the General Permit on or about September 17, 1992, and reissued the General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

16. In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained and complied with an individual NPDES permit. 33 U.S.C. § 1311(a).

17. The General Permit contains several prohibitions. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of the Best Available Technology Economically Achievable ("BAT") for

1 toxic and nonconventional pollutants and the Best Conventional Pollutant Control Technology  
2 (“BCT”) for conventional pollutants. BAT and BCT include both nonstructural and structural  
3 measures. General Permit, Section A(8). Discharge Prohibition A(2) of the General Permit  
4 prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to  
5 cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the General Permit  
6 prohibits storm water discharges to any surface or ground water that adversely impact human health  
7 or the environment. Receiving Water Limitation C(2) of the General Permit prohibits storm water  
8 discharges that cause or contribute to an exceedance of any applicable water quality standards  
9 contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

10 18. The General Permit requires that facility operators “investigate the facility to identify  
11 all non-storm water discharges and their sources. As part of this investigation, all drains (inlets and  
12 outlets) shall be evaluated to identify whether they connect to the storm drain system. All non-storm  
13 water discharges shall be described. This shall include the source, quantity, frequency, and  
14 characteristics of the non-storm water discharges and associated drainage area.” Section A(6)(a)(v).  
15 The General Permit authorizes certain non-storm water discharges providing that the non-storm  
16 water discharges are in compliance with Regional Board requirements; that the non-storm water  
17 discharges are in compliance with local agency ordinances and/or requirements; that best  
18 management practices are included in the Storm Water Pollution Prevention Plan to (1) prevent or  
19 reduce the contact of non-storm water discharges with significant materials or equipment and (2)  
20 minimize, to the extent practicable, the flow or volume of non-storm water discharges; that the non-  
21 storm water discharges do not contain significant quantities of pollutants; and that the monitoring  
22 program includes quarterly visual observations of each non-storm water discharge and its sources to  
23 ensure that BMPs are being implemented and are effective (Special Conditions D). Section B(3) of  
24 the General Permit requires dischargers to conduct visual observations of all drainage areas for the  
25 presence of non-storm water discharges, to observe the non-storm water discharges, and maintain  
26 records of such observations.

27 19. In addition to absolute prohibitions, the General Permit contains a variety of  
28 substantive and procedural requirements that dischargers must meet. Facilities discharging, or

1 having the potential to discharge, storm water associated with industrial activity that have not  
2 obtained an individual NPDES permit must apply for coverage under the State's General Permit by  
3 filing a Notice of Intent to Comply ("NOI"). The General Permit requires existing dischargers to  
4 have filed their NOIs before March 30, 1992.

5 20. Dischargers must develop and implement a Storm Water Pollution Prevention Plan  
6 ("SWPPP"). The SWPPP must describe storm water control facilities and measures that comply  
7 with the BAT and BCT standards. The General Permit requires that an initial SWPPP has been  
8 developed and implemented before October 1, 1992. The SWPPP must, among other requirements,  
9 identify and evaluate sources of pollutants associated with industrial activities that may affect the  
10 quality of storm and non-storm water discharges from the facility and identify and implement site-  
11 specific best management practices ("BMPs") to reduce or prevent pollutants associated with  
12 industrial activities in storm water and authorized non-storm water discharges (Section A(2)). The  
13 SWPPP's BMPs must implement BAT and BCT (Section B(3)). The SWPPP must include: a  
14 description of individuals and their responsibilities for developing and implementing the SWPPP  
15 (Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow  
16 pattern and nearby water bodies, the location of the storm water collection, conveyance and  
17 discharge system, structural control measures, impervious areas, areas of actual and potential  
18 pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials  
19 handled and stored at the site (Section A(5)); a description of potential pollutant sources including  
20 industrial processes, material handling and storage areas, dust and particulate generating activities,  
21 and a description of significant spills and leaks, a list of all non-storm water discharges and their  
22 sources, and a description of locations where soil erosion may occur (Section A(6)). The SWPPP  
23 must include an assessment of potential pollutant sources at the Facility and a description of the  
24 BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water  
25 discharges and authorized non-storm water discharges, including structural BMPs where non-  
26 structural BMPs are not effective (Section A(7), (8)). The SWPPP must be evaluated to ensure  
27 effectiveness and must be revised where necessary (Section A(9),(10)).

28 21. Section C(3) of the General Permit requires a discharger to prepare and submit a

1 report to the Regional Board describing changes it will make to its current BMPs in order to prevent  
2 or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance  
3 of water quality standards. Once approved by the Regional Board, the additional BMPs must be  
4 incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no  
5 later than 60 days from the date the discharger first learns that its discharge is causing or  
6 contributing to an exceedance of an applicable water quality standard. Section C(4)(a).

7 22. Section C(11)(d) of the General Permit's Standard Provisions requires dischargers to  
8 report any noncompliance to the Regional Board. *See also* Section E(6). Section A(9) of the General  
9 Permit requires an annual evaluation of storm water controls including the preparation of an  
10 evaluation report and implementation of any additional measures in the SWPPP to respond to the  
11 monitoring results and other inspection activities.

12 23. The General Permit requires dischargers commencing industrial activities before  
13 October 1, 1992, to develop and implement an adequate written monitoring and reporting program  
14 no later than October 1, 1992. Existing facilities covered under the General Permit must implement  
15 all necessary revisions to their monitoring programs no later than August 1, 1997.

16 24. As part of their monitoring program, dischargers must identify all storm water  
17 discharge locations that produce a significant storm water discharge, evaluate the effectiveness of  
18 BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the  
19 SWPPP are adequate and properly implemented. Dischargers must conduct visual observations of  
20 these discharge locations for at least one storm per month during the wet season (October through  
21 May) and record their findings in their Annual Report. Dischargers must also collect and analyze  
22 storm water samples from at least two storms per year. Section B(5)(a) of the General Permit  
23 requires that dischargers "shall collect storm water samples during the first hour of discharge from  
24 (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season.  
25 All storm water discharge locations shall be sampled." Section B(5)(c)(i) requires dischargers to  
26 sample and analyze during the wet season for basic parameters, such as pH, total suspended solids,  
27 electrical conductance, and total organic content or oil & grease, as well as certain industry-specific  
28 parameters. Section B(5)(c)(ii) requires dischargers to sample for toxic chemicals and other

1 pollutants likely to be in the storm water discharged from the facility. Section B(5)(c)(iii) requires  
2 discharges to sample for parameters dependent on a facility's standard industrial classification  
3 ("SIC") code. Dischargers must also conduct dry season visual observations to identify sources of  
4 non-storm water pollution. Section B(7)(a) indicates that the visual observations and samples must  
5 represent the "quality and quantity of the facility's storm water discharges from the storm event."  
6 Section B(7)(c) requires that "if visual observation and sample collection locations are difficult to  
7 observe or sample...facility operators shall identify and collect samples from other locations that  
8 represent the quality and quantity of the facility's storm water discharges from the storm event."

9 25. Section B(14) of the General Permit requires dischargers to submit an annual report  
10 by July 1 of each year to the executive officer of the relevant Regional Board. The annual report  
11 must be signed and certified by an appropriate corporate officer. Sections B(14), C(9), (10). Section  
12 A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation  
13 of their storm water controls, including certifying compliance with the General Permit. *See also*  
14 Sections C(9), C(10) and B(14).

15 26. The General Permit does not provide for any mixing zones by dischargers. The  
16 General Permit does not provide for any dilution credits to be applied by dischargers.

17 27. The Regional Board has established water quality standards for Suisun Bay in the  
18 Water Quality Control Plan for the San Francisco Bay Basin, generally referred to as the Basin Plan.

19 28. The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters  
20 shall be maintained free of toxic substances in concentrations that are lethal or that produce other  
21 detrimental responses in aquatic organisms."

22 29. The Basin Plan provides that "[s]urface waters shall not contain concentrations of  
23 chemical constituents in amounts that adversely affect any designated beneficial use."

24 30. The Basin Plan provides that "[t]he suspended sediment load and suspended sediment  
25 discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or  
26 adversely affect beneficial uses."

27 31. The Basin Plan provides that "[w]aters shall be free of changes in turbidity that cause  
28 nuisance or adversely affect beneficial uses."

1           32.     The Basin Plan provides that “[w]aters shall be free of coloration that causes nuisance  
2 or adversely affects beneficial uses.”

3           33.     The Basin Plan provides that “[w]aters shall not contain floating material, including  
4 solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial  
5 uses.”

6           34.     The Basin Plan includes a narrative oil and grease standard which states that  
7 “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a  
8 visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or  
9 otherwise adversely affect beneficial uses.”

10          35.     The Basin Plan provides that “[w]aters shall not contain suspended material in  
11 concentrations that cause nuisance or adversely affect beneficial uses.”

12          36.     The Basin Plan provides that “[w]aters shall not contain taste- or odor-producing  
13 substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible  
14 products of aquatic origin, that cause nuisance, or that adversely affect beneficial uses.”

15          37.     The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor raised  
16 above 8.5.”

17          38.     The EPA has established Parameter Benchmark Values as guidelines for determining  
18 whether a facility discharging industrial storm water has implemented the requisite BAT and BCT.  
19 EPA has established Parameter Benchmark Values for the following parameters, among others: pH –  
20 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L, oil and grease (“O&G”) – 15 mg/L, and  
21 iron – 1.0 mg/L.

22          39.     Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement  
23 actions against any “person,” including individuals, corporations, or partnerships, for violations of  
24 NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive  
25 relief under the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an  
26 assessment of civil penalties of up to \$37,500 per day per violation for all violations pursuant to  
27 Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.  
28

1 **V. STATEMENT OF FACTS**

2 40. Defendants operate a truck maintenance facility located at 441 North Buchanan  
3 Circle in Pacheco, California. On information and belief, CSPA alleges that the Facility is engaged  
4 in the maintenance and fueling of waste collection vehicles. The Facility falls within SIC Code  
5 4953. The Facility covers approximately 4 acres, the majority of which is paved. On information  
6 and belief, Plaintiff alleges that there are at least four large buildings located on the property.  
7 Plaintiff is informed and believes, and thereupon alleges that maintenance of vehicles is conducted  
8 both inside and outside of these buildings.

9 41. Defendant channels and collects storm water falling on the Facility through a series  
10 of storm water drains that lead to at least one storm water outfall. The Facility's outfall or outfalls  
11 discharge into channels that flow into Grayson Creek, which flows into Pacheco Creek, which then  
12 flows into Suisun Bay.

13 42. On information and belief, Plaintiff alleges that the industrial activities at the site  
14 include the fueling, painting and maintenance of vehicles and bins used in waste collection activities.  
15 These activities take place outside and are exposed to rainfall. These areas are exposed to storm  
16 water and storm flows due to the lack of overhead coverage, berms, and other storm water  
17 controls.

18 43. Fueling stations and vehicles are operated and stored at the Facility in areas exposed  
19 to storm water flows. Plaintiff is informed and believes, and thereupon alleges, that such machinery  
20 and equipment leak contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that  
21 are exposed to storm water flows, and that such machinery and equipment track sediment and other  
22 contaminants throughout the Facility. Vehicles enter and exit the Facility directly from and to North  
23 Buchanan Circle. On information and belief, Plaintiff alleges that trucks leaving the Facility track  
24 substantial amounts of material onto North Buchanan Circle. During rain events, material that has  
25 been tracked from the Facility onto public roads during dry weather is transported via storm water to  
26 storm drain channels.

27 44. Plaintiff is informed and believes, and thereupon alleges that the storm water flows  
28 easily over the surface of the Facility, collecting suspended sediment, dirt, metals, oils, grease, and

1 other pollutants as it flows toward the storm water drains. Storm water and any pollutants contained  
2 in that storm water entering the drains flows directly to the Facility's outfall or outfalls which  
3 discharge into channels that flow into Suisun Bay.

4 45. The management practices at the Facility are wholly inadequate to prevent the  
5 sources of contamination described above from causing the discharge of pollutants to waters of the  
6 United States. The Facility lacks sufficient structural controls such as grading, berming, roofing,  
7 containment, or drainage structures to prevent rainfall and storm water flows from coming into  
8 contact with these and other exposed sources of contaminants. The Facility lacks sufficient  
9 structural controls to prevent the discharge of water once contaminated. The Facility lacks adequate  
10 storm water pollution treatment technologies to treat storm water once contaminated. The Facility  
11 lacks controls to prevent the tracking and flow of pollutants onto adjacent public roads.

12 46. Since at least October 13, 2009, Defendants have taken samples or arranged for  
13 samples to be taken of storm water discharges at the Facility. The sample results were reported in  
14 the Facility's annual reports submitted to the Regional Board. Defendants certified each of those  
15 annual reports pursuant to Sections A and C of the General Permit.

16 47. Since at least October 13, 2009, the Facility has detected TSS and O&G in storm  
17 water discharged from the Facility. Since at least March 15, 2011, the Facility has detected iron in  
18 storm water discharged from the Facility. Levels of these pollutants detected in the Facility's storm  
19 water have been in excess of EPA's numeric parameter benchmark values.

20 48. The following storm water discharges on the following dates contained observations  
21 of pollutants in violation of narrative water quality standards established in the Basin Plan. These  
22 observations are in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water  
23 Limitations C(1) and C(2) of the General Permit and are evidence of ongoing violations of Effluent  
24 Limitation B(3) of the General Permit. They include violations of the narrative discharge standards  
25 for floating material, suspended material, color, and oil and grease.

26 ///

27 ///

28 ///



<b>Date</b>	<b>Parameter</b>	<b>Observation</b>	<b>Basin Plan Narrative Water Quality Objective</b>	<b>Location (as identified by the Facility)</b>
2/19/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-1
2/19/2013	Narrative	Cloudy brown color	Basin Plan at 3.3.4	SS-1
2/19/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-3
2/19/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-4
2/19/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-5
1/23/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-1
1/23/2013	Narrative	Cloudy brown color	Basin Plan at 3.3.4	SS-1
1/23/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-3
1/23/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-4
1/23/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-5
12/14/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-1
12/14/2012	Narrative	Cloudy brown color	Basin Plan at 3.3.4	SS-1
12/14/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-3
12/14/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-4
12/14/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-5
11/28/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-1
11/28/2012	Narrative	Cloudy brown color	Basin Plan at 3.3.4	SS-1
11/28/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-3
11/28/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-4
11/28/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-5

1	10/23/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-1
2	10/23/2012	Narrative	Cloudy brown	Basin Plan at 3.3.4	SS-1
3			color		
4	10/23/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-3
5	10/23/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-4
6	10/23/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-5
7	4/10/2012	Narrative	Cloudy; Oil	Basin Plan at 3.3.14 /	Main drain
8			sheen	Basin Plan at 3.3.7	outlet Drain in
9					parking lot
10	3/13/2012	Narrative	Cloudy; Oil	Basin Plan at 3.3.14 /	Main drain
11			sheen	Basin Plan at 3.3.7	outlet Drain in
12					parking lot
13	1/20/2012	Narrative	Cloudy; Oil	Basin Plan at 3.3.14 /	Main drain
14			sheen	Basin Plan at 3.3.7	outlet Drain in
15					parking lot
16	11/9/2011	Narrative	Cloudy; Oil	Basin Plan at 3.3.14 /	Main drain
17			sheen	Basin Plan at 3.3.7	outlet Drain in
18					parking lot
19	10/6/2011	Narrative	Cloudy; Oil	Basin Plan at 3.3.14 /	Main drain
20			sheen	Basin Plan at 3.3.7	outlet Drain in
21					parking lot
22	5/16/2011	Narrative	Cloudy; Oil	Basin Plan at 3.3.14 /	Main Storm
23			sheen	Basin Plan at 3.3.7	Drain Outlet /
24					Yard Drain at
25					Employee
26					Parking Lot
27	4/14/2011	Narrative	Cloudy; Oil	Basin Plan at 3.3.14 /	Main Storm
28			sheen	Basin Plan at 3.3.7	Drain Outlet /

				Yard Drain at Employee Parking Lot
3/15/2011	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main Storm Drain Outlet / Yard Drain at Employee Parking Lot
2/16/2011	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main Storm Drain Outlet / Yard Drain at Employee Parking Lot
1/13/2011	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main Storm Drain Outlet / Yard Drain at Employee Parking Lot
12/8/2010	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main Storm Drain Outlet / Yard Drain at Employee Parking Lot
5/21/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
5/21/2010	Narrative	Oil sheen	Basin Plan at 3.3.7	# Drain at Shop Area

1	5/21/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	# Drain at Back Parking Lot
2					
3					
4	4/27/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
5					
6					
7	4/27/2010	Narrative	Oil sheen	Basin Plan at 3.3.7	#2 Drain at Shop Area
8					
9	4/27/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#3 Drain at Back Parking Lot
10					
11					
12	3/12/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
13					
14					
15	3/12/2010	Narrative	Oil sheen	Basin Plan at 3.3.7	#2 Drain at Shop Area
16					
17	3/12/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#3 Drain at Back Parking Lot
18					
19					
20	2/26/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
21					
22					
23	2/26/2010	Narrative	Oil sheen	Basin Plan at 3.3.7	#2 Drain at Shop Area
24					
25	2/26/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#3 Drain at Back Parking Lot
26					
27					
28	1/21/2010	Narrative	Cloudy /	Basin Plan at 3.3.14 /	#1 Main Yard

		Floating Objects	Basin Plan at 3.3.6	Drain
1/21/2010	Narrative	Oil sheen	Basin Plan at 3.3.7	#2 Drain at Shop Area
1/21/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#3 Drain at Back Parking Lot
12/11/2009	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
12/11/2009	Narrative	Oil sheen	Basin Plan at 3.3.7	#2 Drain at Shop Area
12/11/2009	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#3 Drain at Back Parking Lot
11/6/2009	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
11/6/2009	Narrative	Oil sheen	Basin Plan at 3.3.7	#2 Drain at Shop Area
11/6/2009	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#3 Drain at Back Parking Lot
10/13/2009	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
10/13/2009	Narrative	Oil sheen	Basin Plan at 3.3.7	#2 Drain at Shop Area

10/13/2009	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#3 Drain at Back Parking Lot
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49. The level of total suspended solids in storm water detected by the Facility has exceeded the benchmark value for total suspended solids of 100 mg/L established by EPA. For example, on January 23, 2013, the level of total suspended solids measured by Defendants at the “Effluent Filter” outfall was 1200 mg/L. That level of total suspended solids is 12 times the benchmark value for total suspended solids established by EPA. The Facility also has measured levels of total suspended solids in storm water discharged from the Facility in excess of EPA’s benchmark value of 100 mg/L for total suspended solids in nearly every other storm water sample taken at the Facility for the past five years, including November 28, 2012; April 10, 2012; October 4, 2011; and March 15, 2011.

50. The levels of iron in storm water detected by the Facility have exceeded the benchmark value for iron of 1.0 mg/L established by EPA. For example, on January 23, 2013, the level of iron measured by Defendants at the “Effluent Filter” outfall was 54 mg/L. That level of iron is 54 times the benchmark value for iron established by EPA. The Facility also has measured levels of iron in storm water discharged from the Facility in excess of EPA’s benchmark value of 1.0 mg/L for iron in every other storm water sample taken at the Facility for the past five years (when it has monitored for iron), including November 28, 2012; April 10, 2012; October 4, 2011; and March 15, 2011.

51. The levels of oil & grease in storm water detected by the Facility have exceeded the benchmark value for oil & grease of 15 mg/L established by EPA. For example, on October 13, 2009, the level of oil & grease measured by Defendants at the “Post treatment” outfall was 16.3 mg/L. The Facility also has measured levels of oil & grease in storm water discharged from the Facility in excess of EPA’s benchmark value of 15 mg/L on January 23, 2013; November 28, 2012; April 10, 2012; March 15, 2011; December 8, 2010; and January 21, 2010.

52. On information and belief, Plaintiff alleges that Defendants have failed to monitor

1 storm water discharges from all of the Facility's outfalls. The Facility's 2012-2013 Annual Report  
2 includes storm water sampling results from six different locations. These outfalls were not sampled  
3 during the 2009-2010, 2010-2011, and 2011-2012 wet seasons.

4 53. On information and belief, Plaintiff alleges that Defendants failed to analyze the  
5 Facility's storm water discharges for iron during the 2009-2010 wet season. Because the Facility  
6 has an SIC Code of 4953, it is required to analyze its storm water samples for iron pursuant to Table  
7 D of the General Permit.

8 54. On information and belief, Plaintiff alleges that since at least June 27, 2009,  
9 Defendants have failed to implement BAT and BCT at the Facility for its discharges of TSS, O&G,  
10 iron, and other un-monitored pollutants. Section B(3) of the General Permit requires that  
11 Defendants implement BAT for toxic and nonconventional pollutants and BCT for conventional  
12 pollutants by no later than October 1, 1992. As of the date of this Complaint, Defendant has failed  
13 to implement BAT and BCT.

14 55. On information and belief, Plaintiff alleges that since at least June 27, 2009,  
15 Defendants have failed to implement an adequate Storm Water Pollution Prevention Plan for the  
16 Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP prepared for the  
17 Facility does not set forth site-specific best management practices for the Facility that are consistent  
18 with BAT or BCT for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the  
19 SWPPP prepared for the Facility does not include an adequate assessment of potential pollutant  
20 sources, structural pollutant control measures employed by the Defendants, a list of actual and  
21 potential areas of pollutant contact, or an adequate description of best management practices to be  
22 implemented at the Facility to reduce pollutant discharges. According to information available to  
23 CSPA, Defendants' SWPPP has not been evaluated to ensure its effectiveness and revised where  
24 necessary to further reduce pollutant discharges. Plaintiff is informed and believes, and thereupon  
25 alleges, that the SWPPP does not include each of the mandatory elements required by Section A of  
26 the General Permit.

27 56. Information available to CSPA indicates that as a result of these practices, storm  
28 water containing excessive pollutants is being discharged during rain events from the Facility



1 directly to channels that flow into Suisun Bay.

2 57. Plaintiff is informed and believes, and thereupon alleges, that, Defendants have failed  
3 and continues to fail to alter the Facility's SWPPP and site-specific BMPs consistent with Section  
4 A(9) of the General Permit.

5 58. Plaintiff is informed and believes that Defendants failed to submit to the Regional  
6 Board a true and complete annual report certifying compliance with the General Permit since at least  
7 June 8, 2010. Pursuant to Sections A(9)(d), B(14), and C(9), (10) of the General Permit, Defendant  
8 must submit an annual report, that is signed and certified by the appropriate corporate officer,  
9 outlining the Facility's storm water controls and certifying compliance with the General Permit.  
10 Plaintiff is informed and believes, and thereupon alleges, that Defendants have signed incomplete  
11 annual reports that purported to comply with the General Permit when there was significant  
12 noncompliance at the Facility.

13 59. Information available to Plaintiff indicates that Defendants have not fulfilled the  
14 requirements set forth in the General Permit for discharges from the Facility due to the continued  
15 discharge of contaminated storm water. Plaintiff is informed and believes, and thereupon alleges, that  
16 all of the violations alleged in this Complaint are ongoing and continuing.

17 **VI. CLAIMS FOR RELIEF**

18 **FIRST CAUSE OF ACTION**

19 **Failure to Implement the Best Available and  
20 Best Conventional Treatment Technologies  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

21 60. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set  
22 forth herein.

23 61. The General Permit's SWPPP requirements and Effluent Limitation B(3) require  
24 dischargers to reduce or prevent pollutants in their storm water discharges through implementation  
25 of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. Defendants  
26 have failed to implement BAT and BCT at the Facility for its discharges of TSS, O&G, iron, and  
27 other un-monitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

28 62. Each day since June 27, 2009, that Defendants have failed to develop and implement



1 BAT and BCT in violation of the General Permit is a separate and distinct violation of the General  
2 Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

3 63. Defendants have been in violation of the BAT/BCT requirements every day since June  
4 27, 2009. Defendants continue to be in violation of the BAT/BCT requirements each day that it fails  
5 to develop and fully implement BAT/BCT at the Facility.

6  
7 **SECOND CAUSE OF ACTION**  
8 **Discharges of Contaminated Storm Water**  
9 **in Violation of Permit Conditions and the Act**  
10 **(Violations of 33 U.S.C. §§ 1311, 1342)**

11 64. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set  
12 forth herein.

13 65. Discharge Prohibition A(2) of the General Permit requires that storm water discharges  
14 and authorized non-storm water discharges shall not cause or threaten to cause pollution,  
15 contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the General Permit require  
16 that storm water discharges and authorized non-storm water discharges shall not adversely impact  
17 human health or the environment, and shall not cause or contribute to a violation of any water quality  
18 standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's  
19 Basin Plan.

20 66. Plaintiff is informed and believes, and thereupon alleges, that since at least June 27,  
21 2009, Defendants have been discharging polluted storm water from the Facility in excess of  
22 applicable narrative water quality standards in violation of the Discharge Prohibition A(2) of the  
23 General Permit.

24 67. During every rain event, storm water flows freely over exposed materials, waste  
25 products, and other accumulated pollutants at the Facility, becoming contaminated with floating  
26 material, suspended material, and oil and grease, and, on information and belief, other un-monitored  
27 pollutants, at levels above applicable narrative water quality standards. The storm water then flows  
28 untreated from the Facility into channels that flow into Grayson Creek, which flows into Pacheco  
Creek, which then flows into Suisun Bay.

68. Plaintiff is informed and believes, and thereupon alleges, that these discharges of

contaminated storm water are causing or contributing to the violation of the applicable narrative water quality standards in a Statewide Water Quality Control Plan and/or the applicable Regional Board's Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

69. Plaintiff is informed and believes, and thereupon alleges, that these discharges of contaminated storm water are adversely affecting human health and the environment in violation of Receiving Water Limitation C(1) of the General Permit.

70. Every day since at least June 27, 2009, that Defendants have discharged and continues to discharge polluted storm water from the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations are ongoing and continuous.

**THIRD CAUSE OF ACTION**  
**Failure to Prepare, Implement, Review, and Update**  
**an Adequate Storm Water Pollution Prevention Plan**  
**(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

71. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

72. Section A and Provision E of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate SWPPP no later than October 1, 1992.

73. Defendants have failed to develop and implement an adequate SWPPP for the Facility. Defendants' ongoing failure to develop and implement an adequate SWPPP for the Facility is evidenced by, *inter alia*, Defendants' outdoor performance of vehicle maintenance and fueling without appropriate best management practices; the continued exposure and tracking of waste resulting from the operation or maintenance of vehicles at the site; the failure to either treat storm water prior to discharge or to implement effective containment practices; and the continued discharge of storm water pollutants from the Facility at levels in excess of EPA benchmark values and Basin Plan narrative water quality standards.

74. Defendants have failed to adequately update the Facility's SWPPP in response to the analytical results of the Facility's storm water monitoring.

75. Each day since June 27, 2009, that Defendants have failed to develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

76. Defendants have been in violation of the SWPPP requirements every day since June 27, 2009. Defendants continue to be in violation of the SWPPP requirements each day that it fails to develop and fully implement an adequate SWPPP for the Facility.

#### **FOURTH CAUSE OF ACTION**

##### **Failure to Develop and Implement an Adequate Monitoring and Reporting Program (Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

77. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

78. Section B of the General Permit requires dischargers of storm water associated with industrial activity to have developed and be implementing a monitoring and reporting program (including, inter alia, sampling and analysis of discharges) no later than October 1, 1992.

79. Defendants have failed to develop and implement an adequate monitoring and reporting program for the Facility. Defendants' ongoing failure to develop and implement an adequate monitoring and reporting program are evidenced by, inter alia, their failure to monitor and sample all storm water discharges from the Facility during the 2009-2010, 2010-2011, and 2011-2012 wet seasons.

80. Each day since June 27, 2009, that Defendants have failed to develop and implement an adequate monitoring and reporting program for the Facility in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results are ongoing and continuous violations of the Act.

#### **FIFTH CAUSE OF ACTION**

##### **False Certification of Compliance in Annual Report (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

81. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

1           82. Defendants have falsely certified compliance with the General Permit in each of the  
2 annual reports submitted to the Regional Board since at least June 8, 2010.

3           83. Each day since at least June 8, 2010, that Defendants have falsely certified compliance  
4 with the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of  
5 the Act, 33 U.S.C. § 1311(a). Defendants continue to be in violation of the General Permit's  
6 certification requirement each day that it maintains its false certification of its compliance with the  
7 General Permit.

8 **VII. RELIEF REQUESTED**

9           Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

10           a. Declare Defendants to have violated and to be in violation of the Act as alleged  
11 herein;

12           b. Enjoin Defendants from discharging polluted storm water from the Facility unless  
13 authorized by the Permit;

14           c. Enjoin Defendants from further violating the substantive and procedural  
15 requirements of the Permit;

16           d. Order Defendants to immediately implement storm water pollution control and  
17 treatment technologies and measures that are equivalent to BAT or BCT and prevent pollutants in the  
18 Facility's storm water from contributing to violations of any water quality standards;

19           e. Order Defendants to comply with the Permit's monitoring and reporting  
20 requirements, including ordering supplemental monitoring to compensate for past monitoring  
21 violations;

22           f. Order Defendants to prepare a SWPPP consistent with the Permit's requirements  
23 and implement procedures to regularly review and update the SWPPP;

24           g. Order Defendants to provide Plaintiff with reports documenting the quality and  
25 quantity of their discharges to waters of the United States and their efforts to comply with the Act and  
26 the Court's orders;

27           h. Order Defendants to pay civil penalties of \$37,500 per day per violation for all  
28 violations of the Act pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a)

1 and 40 C.F.R. §§ 19.1 - 19.4;

2 i. Order Defendants to take appropriate actions to restore the quality of waters  
3 impaired or adversely affected by their activities;

4 j. Award Plaintiff's costs (including reasonable investigative, attorney, witness,  
5 compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

6 k. Award any such other and further relief as this Court may deem appropriate.

7  
8 Dated: August 26, 2014

Respectfully submitted,

9 LOZEAU DRURY LLP

10 By: /s/ Douglas J. Chermak

11 Douglas J. Chermak  
12 Attorneys for Plaintiff  
13 CALIFORNIA SPORTFISHING PROTECTION  
14 ALLIANCE  
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# EXHIBIT A



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**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

June 18, 2014

Donald W. Slager, President and Chief Executive Officer  
Paul Ginochio  
Republic Services, Inc.  
18500 N. Allied Way  
Phoenix, AZ 85054

Paul Ginochio, Operations Manager  
Allied Waste Systems  
441 N Buchanan Cir.  
Pacheco, CA 94553

**Re: Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act**

Dear Mr. Slager and Mr. Ginochio:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "Act") that CSPA believes are occurring at Republic Service, Inc.'s industrial facility located at 441 N. Buchanan Cir. in Pacheco, California, and operating under the name "Allied Waste Systems" ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Suisun Bay and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as "Allied Waste").

This letter addresses Allied Waste's unlawful discharge of pollutants from the Facility to storm drains that flow to Grayson Creek, which flows to Pacheco Creek or Slough and into Suisun Bay ("Bay"). The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Water Quality Order No. 92-12-DWQ as amended by Order No.

Notice of Violations and Intent to File Suit



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97-03-DWQ (hereinafter "General Permit").<sup>1</sup> The WDID identification number for the Facility listed on documents submitted to the Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"), is 2 07I015302. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. 33 U.S.C. § 1365(a). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Allied Waste is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Allied Waste under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

## **I. Background.**

On July 30, 1999, the State Board approved Allied Waste's Notice of Intent to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). In its NOI, Allied Waste certifies that the Facility is classified under SIC code 4953. The Facility collects and discharges storm water from its 4-acre industrial site through at least one outfall that discharge into channels that flow into Grayson Creek, which flows into Pacheco Creek, which then flows into the Bay.

The Regional Board has identified beneficial uses of the Bay region's waters and established water quality standards for Grayson Creek, Pacheco Creek, and the Bay in the "Water Quality Control Plan for the San Francisco Bay Basin," generally referred to as the "Basin Plan." See [http://www.waterboards.ca.gov/sanfranciscobay/basin\\_planning.shtml](http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml). The beneficial uses of these waters include water contact recreation, noncontact water recreation, wildlife habitat, preservation of rare and endangered species, commercial and sportfishing, estuarine habitat, fish migration, cold freshwater habitat, and warm freshwater habitat. The noncontact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking,

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<sup>1</sup> On April 1, 2014, the State Board reissued the General Permit, continuing its mandate that industrial facilities implement the best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT") and, in addition, establishing numeric action levels mandating additional pollution control efforts. State Board Order 2014-0057-DWQ. The new permit, however, does not go into effect until July 1, 2015. Until that time, the current General Permit remains in full force and effect.



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beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features.” *Id.* at 2.1.16. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of Grayson Creek, Pacheco Creek, and the Bay for water contact recreation and noncontact water recreation.

The Basin Plan establishes water quality standards for the Bay and its tributaries. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms.” *Id.* at 3.3.18. The Basin Plan provides that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.* at 3.3.21. The Basin Plan provides that “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.14. The Basin Plan provides that “[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.12. The Basin Plan provides that “[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.19. The Basin Plan provides that “[w]aters shall not contain taste- or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin, that cause nuisance, or that adversely affect beneficial uses.” *Id.* at 3.3.16. The Basin Plan provides that “[w]aters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.6. The Basin Plan provides that the “pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at 3.3.9. The Basin Plan provides that “[w]aters shall be free of coloration that causes nuisance or adversely affects beneficial uses.” *Id.* at 3.3.4. The Basin Plan has a narrative oil and grease standard that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3.3.7.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).<sup>2</sup> The following benchmarks have been established for pollutants discharged by Allied Waste: pH – 6.0 - 9.0 units; total suspended solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; and iron – 1.0 mg/L.

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<sup>2</sup> The Benchmark Values can be found at:  
[http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf) and  
<http://cwea.org/p3s/documents/multi-sectorrev.pdf> (Last accessed on May 23, 2014).

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## **II. Alleged Violations of the Clean Water Act and the General Permit.**

### **A. Discharges in Violation of the Permit not Subject to BAT/BCT**

Allied Waste has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand ("BOD"), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Allied Waste has violated and continues to violate the terms and conditions of the General Permit. In particular, Allied Waste has discharged and continues to discharge storm water with unacceptable levels of TSS, O&G, iron, and other pollutants in violation of the General Permit. Allied Waste's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

The following observations of pollutants in storm water discharged from the Facility have violated narrative water quality standards established in the Basin Plan and have thus violated



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Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Permit.

<b>Date</b>	<b>Parameter</b>	<b>Observation</b>	<b>Basin Plan Narrative Water Quality Objective</b>	<b>Location (as identified by the Facility)</b>
2/19/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-1
2/19/2013	Narrative	Cloudy brown color	Basin Plan at 3.3.4	SS-1
2/19/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-3
2/19/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-4
2/19/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-5
1/23/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-1
1/23/2013	Narrative	Cloudy brown color	Basin Plan at 3.3.4	SS-1
1/23/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-3
1/23/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-4
1/23/2013	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-5
12/14/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-1
12/14/2012	Narrative	Cloudy brown color	Basin Plan at 3.3.4	SS-1
12/14/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-3
12/14/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-4
12/14/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-5
11/28/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-1
11/28/2012	Narrative	Cloudy brown color	Basin Plan at 3.3.4	SS-1
11/28/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-3
11/28/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-4
11/28/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-5
10/23/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-1
10/23/2012	Narrative	Cloudy brown color	Basin Plan at 3.3.4	SS-1
10/23/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-3
10/23/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-4
10/23/2012	Narrative	Oil sheen	Basin Plan at 3.3.7	SD-5
4/10/2012	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main drain outlet Drain in parking lot
3/13/2012	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main drain outlet Drain in parking lot

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1/20/2012	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main drain outlet Drain in parking lot
11/9/2011	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main drain outlet Drain in parking lot
10/6/2011	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main drain outlet Drain in parking lot
5/16/2011	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main Storm Drain Outlet / Yard Drain at Employee Parking Lot
4/14/2011	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main Storm Drain Outlet / Yard Drain at Employee Parking Lot
3/15/2011	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main Storm Drain Outlet / Yard Drain at Employee Parking Lot
2/16/2011	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main Storm Drain Outlet / Yard Drain at Employee Parking Lot
1/13/2011	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main Storm Drain Outlet / Yard Drain at Employee Parking Lot
12/8/2010	Narrative	Cloudy; Oil sheen	Basin Plan at 3.3.14 / Basin Plan at 3.3.7	Main Storm Drain Outlet / Yard Drain at Employee Parking Lot
5/21/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
5/21/2010	Narrative	Oil sheen	Basin Plan at 3.3.7	# Drain at Shop Area

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5/21/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	# Drain at Back Parking Lot
4/27/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
4/27/2010	Narrative	Oil sheen	Basin Plan at 3.3.7	#2 Drain at Shop Area
4/27/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#3 Drain at Back Parking Lot
3/12/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
3/12/2010	Narrative	Oil sheen	Basin Plan at 3.3.7	#2 Drain at Shop Area
3/12/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#3 Drain at Back Parking Lot
2/26/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
2/26/2010	Narrative	Oil sheen	Basin Plan at 3.3.7	#2 Drain at Shop Area
2/26/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#3 Drain at Back Parking Lot
1/21/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
1/21/2010	Narrative	Oil sheen	Basin Plan at 3.3.7	#2 Drain at Shop Area
1/21/2010	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#3 Drain at Back Parking Lot
12/11/2009	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
12/11/2009	Narrative	Oil sheen	Basin Plan at 3.3.7	#2 Drain at Shop Area
12/11/2009	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#3 Drain at Back Parking Lot



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11/6/2009	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
11/6/2009	Narrative	Oil sheen	Basin Plan at 3.3.7	#2 Drain at Shop Area
11/6/2009	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#3 Drain at Back Parking Lot
10/13/2009	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#1 Main Yard Drain
10/13/2009	Narrative	Oil sheen	Basin Plan at 3.3.7	#2 Drain at Shop Area
10/13/2009	Narrative	Cloudy / Floating Objects	Basin Plan at 3.3.14 / Basin Plan at 3.3.6	#3 Drain at Back Parking Lot

The information in the above table reflects data gathered from Allied Waste's self-monitoring during the 2009-2010, 2010-2011, 2011-2012, and 2012-2013 wet seasons. CSPA alleges that during each of those wet seasons and continuing through today, Allied Waste has discharged storm water contaminated with pollutants at levels that violate one or more applicable narrative water quality standards, including but not limited to each of the following:

- Floating material - Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.
- Suspended material – Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Color – Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
- Oil and Grease – Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Permit.

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<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>EPA Benchmark Value</b>	<b>Outfall (as identified by the Facility)</b>
1/23/2013	Total Suspended Solids	528 mg/L	100 mg/L	Storm Drain 1
1/23/2013	Oil & Grease	61 mg/L	15 mg/L	Storm Drain 1
1/23/2013	Iron	28 mg/L	1.0 mg/L	Storm Drain 1
1/23/2013	Total Suspended Solids	780 mg/L	100 mg/L	Storm Drain 3
1/23/2013	Oil & Grease	40 mg/L	15 mg/L	Storm Drain 3
1/23/2013	Iron	13 mg/L	1.0 mg/L	Storm Drain 3
1/23/2013	Total Suspended Solids	590 mg/L	100 mg/L	Storm Drain 4
1/23/2013	Oil & Grease	69 mg/L	15 mg/L	Storm Drain 4
1/23/2013	Iron	15 mg/L	1.0 mg/L	Storm Drain 4
1/23/2013	Total Suspended Solids	1280 mg/L	100 mg/L	Storm Drain 5
1/23/2013	Oil & Grease	120 mg/L	15 mg/L	Storm Drain 5
1/23/2013	Iron	29 mg/L	1.0 mg/L	Storm Drain 5
1/23/2013	Iron	4.3 mg/L	1.0 mg/L	Surface Sample
1/23/2013	Total Suspended Solids	1200 mg/L	100 mg/L	Effluent Filter
1/23/2013	Iron	54 mg/L	1.0 mg/L	Effluent Filter
11/28/2012	Total Suspended Solids	274 mg/L	100 mg/L	Storm Drain 1
11/28/2012	Oil & Grease	37 mg/L	15 mg/L	Storm Drain 1
11/28/2012	Iron	12 mg/L	1.0 mg/L	Storm Drain 1
11/28/2012	Total Suspended Solids	151 mg/L	100 mg/L	Storm Drain 3
11/28/2012	Iron	4 mg/L	1.0 mg/L	Storm Drain 3
11/28/2012	Total Suspended Solids	339 mg/L	100 mg/L	Storm Drain 4
11/28/2012	Oil & Grease	26 mg/L	15 mg/L	Storm Drain 4
11/28/2012	Iron	9.2 mg/L	1.0 mg/L	Storm Drain 4
11/28/2012	Total Suspended Solids	510 mg/L	100 mg/L	Storm Drain 5
11/28/2012	Oil & Grease	59 mg/L	15 mg/L	Storm Drain 5
11/28/2012	Iron	21 mg/L	1.0 mg/L	Storm Drain 5
11/28/2012	Total Suspended Solids	6190 mg/L	100 mg/L	Surface Sample
11/28/2012	Oil & Grease	37 mg/L	15 mg/L	Surface Sample
11/28/2012	Iron	250 mg/L	1.0 mg/L	Surface Sample
11/28/2012	Total Suspended Solids	135 mg/L	100 mg/L	Effluent Filter
11/28/2012	Iron	9.9 mg/L	1.0 mg/L	Effluent Filter
4/10/2012	Total Suspended Solids	172 mg/L	100 mg/L	Main Drain Outlet Pretreatment
4/10/2012	Oil & Grease	19 mg/L	15 mg/L	Main Drain Outlet Pretreatment
4/10/2012	Iron	5.5 mg/L	1.0 mg/L	Main Drain Outlet Pretreatment
4/10/2012	Total Suspended Solids	143 mg/L	100 mg/L	Post Treatment
4/10/2012	Iron	10 mg/L	1.0 mg/L	Post Treatment

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10/4/2011	Total Suspended Solids	252 mg/L	100 mg/L	Main Storm Drain Outlet
10/4/2011	Iron	6.5 mg/L	1.0 mg/L	Main Storm Drain Outlet
3/15/2011	Total Suspended Solids	366 mg/L	100 mg/L	Main Drain Outlet Pretreatment
3/15/2011	Oil & Grease	31 mg/L	15 mg/L	Main Drain Outlet Pretreatment
3/15/2011	Iron	6.1 mg/L	1.0 mg/L	Main Drain Outlet Pretreatment
3/15/2011	Total Suspended Solids	212 mg/L	100 mg/L	Main Drain Outlet Post treatment
3/15/2011	Iron	10 mg/L	1.0 mg/L	Main Drain Outlet Post treatment
12/8/2010	Total Suspended Solids	170 mg/L	100 mg/L	Main Drain Outlet Pre treatment
12/8/2010	Oil & Grease	20 mg/L	15 mg/L	Main Drain Outlet Pre treatment
12/8/2010	Iron	2.8 mg/L	1.0 mg/L	Main Drain Outlet Pre treatment
1/21/2010	Total Suspended Solids	462 mg/L	100 mg/L	Pre treatment
10/13/2009	Total Suspended Solids	160 mg/L	100 mg/L	Pre treatment
10/13/2009	Oil & Grease	22 mg/L	15 mg/L	Pre treatment
10/13/2009	Oil & Grease	16.3 mg/L	15 mg/L	Post treatment

The information in the above table reflects data gathered from Allied Waste's self-monitoring during the 2009-2010, 2010-2011, 2011-2012, and 2012-2013 wet seasons. CSPA alleges that during each of those wet seasons and continuing through today, Allied Waste has discharged storm water contaminated with pollutants at levels that exceed one or more applicable EPA Benchmarks, including but not limited to each of the following:

- Total Suspended Solids – 100 mg/L
- Oil & Grease – 15 mg/L
- Iron – 1.0 mg/L

CSPA's investigation, including its review of Allied Waste's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values as well as applicable water quality standards indicates that Allied Waste has not implemented BAT and BCT at the Facility for its discharges of TSS, O&G, iron, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. Allied Waste was required to have implemented BAT and BCT by no later than October 1, 1992, or the date the Facility began operating. Thus, Allied Waste is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.



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In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since June 18, 2009, and that will occur at the Facility subsequent to the date of this Notice of Violations and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Allied Waste has discharged storm water containing impermissible levels of TSS, O&G, and iron in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.<sup>3</sup>

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Allied Waste is subject to penalties for violations of the General Permit and the Act since June 18, 2009.

***B. Failure to Develop and Implement an Adequate Monitoring and Reporting Program***

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the “quality and quantity of the facility’s storm water discharges from the storm event.”

The above referenced data was obtained from the Facility’s monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by Allied Waste is not representative of the quality of the Facility’s various storm water discharges and that the Facility failed to monitor all qualifying storm water discharges, CSPA alleges that the Facility’s monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit.

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<sup>3</sup> The rain dates are all the days when 0.1” or more rain fell as measured by a weather station in Concord approximately seven miles from the facility. The weather data can be obtained at [http://www.ipm.ucdavis.edu/calludt.cgi/WXDESCRIPTION?STN=UNION\\_CITY.A](http://www.ipm.ucdavis.edu/calludt.cgi/WXDESCRIPTION?STN=UNION_CITY.A) (Last accessed on June 18, 2014).

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The Facility's Annual Reports indicate that there is one storm water outfall. However, the 2012-2013 Annual Report includes storm water sampling results from six different locations. Therefore, on information and belief, CSPA alleges that the Facility has failed to sample and analyze storm water discharges at all of its storm water discharge locations during the 2009-2010, 2010-2011, and 2011-2012 wet seasons. This results in up to 30 violations of the General Permit.

In addition, the Facility is required to analyze storm water samples for analytical parameters listed in Table D of the General Permit. Since the Facility has an SIC Code of 4953, it is required to analyze its storm water samples for iron. During the 2009-2010 wet season, the Facility failed to analyze its storm water discharges for iron. This results in at least four violations of the General Permit.

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Allied Waste is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since June 18, 2009.

***C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan***

Section A and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) require dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials handled and stored at the site (Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water

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discharges and their sources, and a description of locations where soil erosion may occur (Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (Section A(9),(10)).

CSPA's investigation of the conditions at the Facility as well as Allied Waste's Annual Reports indicate that Allied Waste has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Allied Waste has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Allied Waste has been in continuous violation of Section A and Provision E(2) of the General Permit every day since June 18, 2009, at the very latest, and will continue to be in violation every day that Allied Waste fails to prepare, implement, review, and update an effective SWPPP. Allied Waste is subject to penalties for violations of the General Permit and the Act occurring since June 18, 2009.

***D. Failure to File True and Correct Annual Reports***

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

For the last four wet seasons, Allied Waste and its agent, Paul Ginochio, inaccurately certified in its Annual Reports that the Facility was in compliance with the General Permit. Consequently, Allied Waste has violated Sections A(9)(d), B(14), and C(9) & (10) of the General Permit every time Allied Waste failed to submit a complete or correct report and every time Allied Waste or its agents falsely purported to comply with the Act. Allied Waste is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since at least June 8, 2010.

**III. Persons Responsible for the Violations.**

CSPA puts Allied Waste on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Allied Waste on notice that it intends to include those persons in this action.

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**IV. Name and Address of Noticing Parties.**

The name, address, and telephone number of CSPA is as follows:

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance  
3536 Rainier Avenue  
Stockton, CA 95204  
Tel. (209) 464-5067  
Fax (209) 464-1028  
E-Mail: deltakeep@me.com

**V. Counsel.**

CSPA has retained our office to represent it in this matter. Please direct all communications to:

Michael R. Lozeau  
Douglas J. Chermak  
Lozeau Drury LLP  
410 12th Street, Suite 250  
Oakland, California 94607  
Tel. (510) 836-4200  
Fax (510) 836-4205  
michael@lozeaudrury.com  
doug@lozeaudrury.com

**VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Allied Waste to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

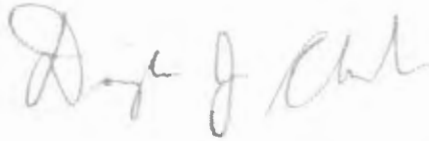
CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file a citizen suit under Section 505(a) of the Act against Allied Waste for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests that you initiate those discussions within the next 20 days so that they



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may be completed before the end of the 60-day notice period. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in dark ink, appearing to read "Doug J. Chermak", is centered below the word "Sincerely,".

Douglas J. Chermak  
Lozeau Drury LLP  
Attorneys for California Sportfishing Protection Alliance

cc via First Class Mail: CT Corporation System, Agent for Service of Process for Republic  
Services, Inc. (Entity Number C2267166)  
818 West Seventh Street, 2nd Floor  
Los Angeles, CA 90017

**SERVICE LIST – via certified mail**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 1101A  
Washington, D.C. 20460

Thomas Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Jared Blumenfeld, Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Bruce H. Wolfe, Executive Officer II  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

**ATTACHMENT A**

**Rain Dates, Allied Waste Pacheco, Pacheco, California**

10/13/2009	4/28/2010	3/23/2011
10/19/2009	5/10/2010	3/24/2011
11/20/2009	5/17/2010	3/25/2011
11/27/2009	5/25/2010	3/26/2011
12/6/2009	5/26/2010	4/7/2011
12/7/2009	5/27/2010	5/17/2011
12/11/2009	10/23/2010	6/1/2011
12/12/2009	10/24/2010	6/4/2011
12/13/2009	11/7/2010	6/5/2011
12/26/2009	11/19/2010	6/28/2011
1/12/2010	11/20/2010	10/3/2011
1/18/2010	11/23/2010	10/5/2011
1/19/2010	11/27/2010	11/5/2011
1/20/2010	12/5/2010	11/11/2011
1/21/2010	12/8/2010	11/19/2011
1/23/2010	12/14/2010	11/24/2011
1/25/2010	12/17/2010	1/19/2012
1/26/2010	12/18/2010	1/20/2012
1/29/2010	12/19/2010	1/21/2012
2/4/2010	12/21/2010	1/22/2012
2/6/2010	12/25/2010	1/23/2012
2/9/2010	12/28/2010	2/7/2012
2/21/2010	1/1/2011	2/13/2012
2/23/2010	1/2/2011	2/29/2012
2/26/2010	1/30/2011	3/1/2012
2/27/2010	2/15/2011	3/13/2012
3/2/2010	2/16/2011	3/14/2012
3/3/2010	2/17/2011	3/16/2012
3/10/2010	2/18/2011	3/17/2012
3/12/2010	2/19/2011	3/24/2012
3/30/2010	2/24/2011	3/25/2012
3/31/2010	2/25/2011	3/27/2012
4/4/2010	3/6/2011	3/31/2012
4/11/2010	3/14/2011	4/10/2012
4/12/2010	3/15/2011	4/12/2012
4/20/2010	3/18/2011	4/13/2012
4/21/2010	3/19/2011	4/25/2012
4/27/2010	3/20/2011	5/8/2012

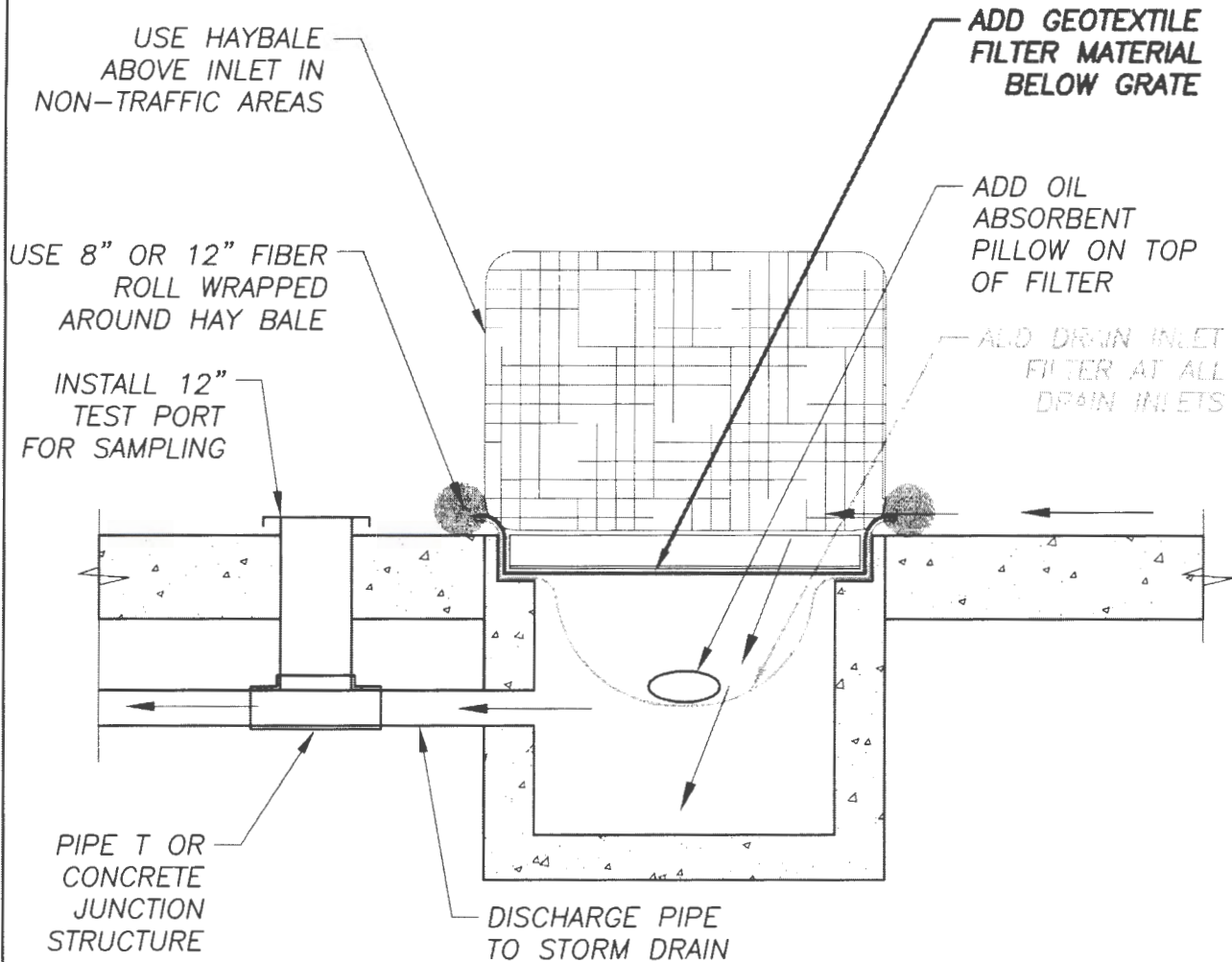
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6/4/2012	4/1/2014
10/22/2012	4/4/2014
10/31/2012	4/25/2014
11/1/2012	
11/9/2012	
11/16/2012	
11/17/2012	
11/21/2012	
11/30/2012	
12/2/2012	
12/21/2012	
12/22/2012	
12/23/2012	
12/25/2012	
1/5/2013	
1/23/2013	
2/19/2013	
3/6/2013	
3/19/2013	
3/30/2013	
3/31/2013	
4/1/2013	
4/4/2013	
4/7/2013	
11/19/2013	
11/20/2013	
11/21/2013	
12/6/2013	
1/30/2014	
2/2/2014	
2/5/2014	
2/6/2014	
2/7/2014	
2/8/2014	
2/9/2014	
2/26/2014	
2/28/2014	
3/5/2014	
3/26/2014	
3/29/2014	
3/31/2014	

Notice of Violations and Intent to File Suit



# EXHIBIT C



**DRAIN INLET PROTECTION DETAIL (NORTH FACING)**

PREPARED BY:

**SWT** Civil & Environmental Engineering  
 800-C SOUTH ROCHESTER AVENUE  
 ONTARIO, CALIFORNIA 91761

REPUBLIC SERVICES

441 BUCHANAN CIRCLE, PACHECO, CA  
 DETAIL 1  
**DRAIN INLET 2B EXHIBIT**